BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF BARRY SHULTZ SR. from a decision of the Nez Perce County Board of Equalization for tax year 2013.	))))	APPEAL NO. 13-A-1072 FINAL DECISION AND ORDER

RESIDENTIAL PROPERTY APPEAL

THIS MATTER came on for hearing November 6, 2013, in Lewiston, Idaho before Board Member Linda Pike. Board Members David Kinghorn, Linda Pike and Leland Heinrich participated in this decision. Property owners Barry Sr. and Robin Shultz appeared at hearing for Appellant. County Prosecutors Nance Ceccarelli and Zachary Battles, Assessor Daniel Anderson and Senior Appraiser Brad Bovey appeared for Respondent Nez Perce County. This appeal is taken from a decision of the Nez Perce County Board of Equalization (BOE) modifying the protest of valuation for taxing purposes of property described by Parcel No. RP35N05W030360A.

The issue on appeal is the market value of an improved residential property.

The decision of the Nez Perce County Board of Equalization is modified.

FINDINGS OF FACT

The BOE land value is $32,629, and the improvements' valuation is $204,010, totaling $236,639. Appellant requests the total value be reduced to $150,000.

The subject property is a 5.95 acre parcel located near Lewiston, Idaho. The parcel is improved with a 2,476 square foot, single-level residence built in 2000. Subject is further improved with a small outbuilding, which was assessed for $7,927. The property is situated near an active rock pit blasting operation.

Appellant explained subject's history since the parcel was purchased and developed. Soon after construction was completed in 2000, Appellant reported blasting at the nearby gravel pit began to damage subject's residence. Following engineering reports and other inspections, Appellant reached an undisclosed settlement with the insurance company, presumably to repair the damage. Following the settlement, Appellant testified that obtaining insurance coverage for subject was difficult. In the end, insurance was secured at a high premium rate and on the condition that no claims would be filed stemming from the nearby blasting.

Blasting continued at the rock pit through at least early 2012. After each major blast, Appellant testified an engineering report was ordered to assess and document any new damage. Appellant provided the latest report, which focused on the large blast that occurred on April 17, 2012, about 1,300 feet from subject. The report cited numerous issues which were attributed to movement in subject's residence caused by the nearby blast. Cracks and gaps in the walls, roof, garage, foundation, and elsewhere were reported. The report detailed the repair work needed to cure the issues, but did not estimate the associated costs.

Respondent questioned whether the damage described in the engineering report resulted from the latest blasting, or if prior blasting was the cause. If the damage was caused by prior blasting, Respondent contended no further adjustment was warranted because such damage was accounted for in prior year assessments. Appellant testified with each new report the engineer focused solely on new damage or any worsening of prior damage.

Appellant provided two (2) opinion letters from local realtors regarding subject. Both realtors suggested it would be difficult to sell subject due to the prior damage and close proximity to a continuing rock pit operation. It was noted Appellant would be required to disclose such information to any potential buyer. One of the letters stated, "In 18 years being a Realtor I've never worked with clients who purchased a home knowing it sustained the type of extensive damage [Appellant] described." The other letter noted many buyers would be reluctant to purchase a home without the ability to secure reasonably priced homeowner's insurance. Both letters concluded subject would likely not sell at full market value, if at all.

Appellant also presented a comparative market analysis (CMA) prepared by another local realtor. The CMA considered six (6) sales and five (5) active listings for comparison with subject. The compared properties mostly involved single-level residences which were generally similar to subject in terms of age and square footage. Sale prices were between $150,000 and $236,000, or from $53 to $141 per square foot. The listed properties had asking prices between $166,000 and $245,000. Subject's indicated price range was between $183,300 and $190,200. However, the realtor stated in a later email that "the property may even be worth $15,000 to $20,000 less than this CMA with no bank loaning on this property and the blasting, I don't think anyone would purchase the property."

Respondent challenged most of the properties included in the CMA. Five (5) of the compared properties were located outside the county. Respondent also noted two (2) of the remaining properties were active listings, and a third property involved a manufactured home. After removing the above properties, Respondent focused on the three (3) sales which remained and performed a comparative appraisal-type analysis. The properties sold between $171,890 and $236,000. After making adjustments for physical differences compared to subject, Respondent determined adjusted sale prices between $193,326 and $282,667.

Respondent detailed some of subject's assessment history. Following a decision issued by this Board in 2010, the condition of subject's residence was lowered from "good" (grade 4), to "average" (grade 3). The result was a higher depreciation factor applied to the residence, which in turn reduced the overall value. The lower grade continued to be applied in subsequent tax years. In Respondent's view, subject's physical depreciation was adequately accounted for in the current assessment.

Respondent also discussed functional and economic obsolescence and examples of each were offered. Respondent concluded subject suffers from neither of these types of obsolescence, and therefore no adjustment for these factors was warranted.

Respondent next summarized the results of its most recent ratio study, which compared sale prices to assessed values within subject's specific category study. Respondent reported acceptable ratio study results in subject's category. In Respondent's opinion, the ratio study indicated subject's assessed value was reasonable and equitable.

Respondent also provided a three-step analysis which was more narrowly focused on property considered physically similar to subject. Respondent first filtered all the Class 5 homes from the larger group of residential sales from across the county. There were 62 such sales during 2012. Respondent compared sale prices to assessed values and calculated a median ratio of 93%, which was remarked to be within the standard mandated by the State Tax Commission.

Respondent next filtered the 62 sales according to geographic area. Subject is located in Rural Area 1, which captures rural properties situated most closely to town. Eight (8) such sales were reported. Respondent calculated a median price-to-assessed value ratio of 100.44%, which again was noted to be within the allowable range.

Lastly, Respondent filtered the eight (8) sales according to “property type”, which is a label the county uses to stratify residences based on square footage and the number of levels or floors. Subject was included in the category with single-level residences in excess of 900 square feet in size. There was only one (1) such sale reported and the median ratio was 89.08%. Based on this analysis, Respondent contended subject’s assessed value was proper.

Respondent additionally provided a list of all sales from subject’s general area since 2000. Physical details concerning the sale properties were not shared, but mean and median sale prices were included. Based on this historical sales data, Respondent was unable to detect an affect on sale price due to proximity near the rock pit.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value, or as applicable exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

Idaho Code § 63-205 requires all taxable property be assessed annually at market value on January 1 of the relevant tax year. Market value is defined in Idaho Code § 63-201 as follows:

> "Market value" means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

In *Merris v. Ada County*, the Idaho Supreme Court identified three (3) generally accepted valuation approaches: the income approach, the cost approach, and the sales comparison approach. 100 Idaho 59, 63; 593 P.2d 394, 398 (1979); *see also* IDAPA 35.01.03.217.02. Neither party supported their primary value positions using an accepted version of the above appraisal approaches, though Respondent did perform an abbreviated sales comparison approach using some sales from Appellant's CMA report.

Support for Respondent's value conclusion was primarily in the form of some statistical analyses. The first such analysis involved the most recent ratio study results determined by the State Tax Commission. Properties in subject's grouping were shown to have an acceptable price-to-value ratio, which Respondent contended was good evidence that subject's assessed value was proper. The Board did not reach the same conclusion.

A ratio study is basically a tool used to measure general level and uniformity within a particular group of properties, as well as to help identify broad market trends. In part the analysis measures the relationship between assessed values and sale prices. In this regard, it can be a useful tool for oversight and equalization. The problem as applied to subject, or any other individual property, is that such ratio study analysis looks to evaluate a group of properties and is not generally focused on an individual property.

The issue before this Board is the market value of only the subject, not whether a broad group of properties is equitably assessed or is assessed on average at or close to market price levels. Few details concerning any of the sales included in the study were shared and no attempt was made to compare any of the sales directly to subject using a recognized appraisal approach. The lack of focus on subject's market value was not lost on the Board.

Respondent also presented another method aimed at supporting subject's assessed value. The analysis applied three (3) different filters to a broad group of sales. Again, most details regarding the sales were absent from the record. Indeed, Respondent did not report sale prices or dates. After applying the final filter, the list of sales was reduced to one (1). When compared to the assessed value, a price-to-value ratio of 89% was calculated.

For much the same reason as discussed in relation to the ratio study above, the Board did not view this alternative analysis as good evidence of subject's market value. While Respondent attempted to find sales most comparable to subject based on several key factors, there was little to no information about the sales provided, only that they reportedly occurred during 2012. More importantly, a comparison of sale prices to assessed values is not a recognized appraisal approach. As such, the Board afforded this information minimal weight.

Respondent further provided a list of sales from subject's area dating back to 2000. Based on this information, Respondent maintained there was no indicated support for reducing values on parcels located near an active rock pit. The Board appreciated the goal and effort behind the additional sales information and analysis, however, the lack of details regarding the sale properties limited our consideration of this information. The Board was unable to draw any conclusions from this list of sales.

Appellant's value evidence was in the form of a CMA performed by a local realtor. The report considered 11 sales and active listings. The properties were not directly compared to subject, though a good amount of information on the comparables was provided. The CMA concluded a price range for subject between $183,300 and $190,200.

Respondent contested most of the properties included in the CMA. In all, Respondent excluded eight (8) of the properties for various reasons. Respondent performed a sales comparison analysis on the remaining three (3) sales. Each sale was directly compared to subject and value adjustments were made for notable physical differences. Due to the large amount of adjustments required for Sale No. 11, it was discarded from the final analysis. What remained were two (2) sales with prices of $171,890 and $225,000, and adjusted prices of $193,326 and $282,667, respectively. Given this value range, Respondent opined subject's total assessed value of $236,634 was reasonable.

The Board appreciated the providing of the CMA sales information, however there were some concerns. One such was the location of some of the properties. Respondent indicated five (5) were situated outside the county. Without some compelling justification for looking at sales outside the county, which was not provided here, the Board agreed such sales should not be considered. The Board also concurs that active listings should not factor heavily in the value conclusion, particularly where relevant and timely sales information is available.

After sifting through the market data provided by the parties, the Board found three (3) sales were due some consideration. Respondent's sales comparison approach which used the three (3) sales was viewed favorably by the Board. The adjustments appeared reasonable, though Sale Nos. 10 and 11 did have a large degree of cumulative adjustments. Despite some lingering concerns, the sales did provide the Board with a reasonable basis by which to evaluate subject's market value.

In addition to the above sales information, Appellant furnished an abundance of information related to the damage caused by nearby blasting. Such information came mostly in the form of news and scholarly articles, testimony of Appellant, and professional opinion letters from local realtors. The damage was further documented in the most recent engineering report, which also included a list of recommended courses of corrective measures. The damage to subject is real and was adequately demonstrated.

The issues connected with subject are serious and would have to be disclosed to a potential buyer. Other issues expressed by Appellant were high homeowner's insurance premiums and a potential buyer's inability to obtain bank financing. The Board agrees these conditions would likely be viewed negatively in the marketplace and would factor heavily in a buyer's decision to purchase subject.

In the end, the best evidence of subject's market value was Respondent's analysis of some of the sales included in Appellant's CMA report. Respondent determined a value range between $193,326 and $282,667. Given the notable issues with subject, the Board is convinced the property's value would lie at the lower end of the indicated range. In conclusion we found Appellant demonstrated error in subject's assessment by a preponderance of the evidence as required by Idaho Code § 63-511. Therefore, the Board will modify the decision of the Nez Perce County Board of Equalization reducing subject's total value to $203,000. Our allocation of total value follows.

Land	$32,629
Residence	162,444
Outbuilding	7,927
Total	203,000

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Nez Perce County Board of Equalization concerning the subject parcel be, and the same hereby is, MODIFIED to reflect a decrease in total value to $203,000.

IT IS FURTHER ORDERED that any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant.

DATED this 11th day of March, 2014.